

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

2024:PHHC:058701

(101) CM-4282-C-2024 in/and
RSA-1975-2008
Date of Decision : April 30, 2024

State of Haryana and others .. Appellants

Versus

Jagdish Chander .. Respondent

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Kuldeep Khandelwal, Advocate,
for the applicant-respondent.

Mr. Harish Nain, Assistant Advocate General, Haryana,
for non-applicant/appellants.

HARSIMRAN SINGH SETHI J. (ORAL)

CM-4282-C-2024

Present application has been filed for fixing the actual date of
hearing of the main appeal.

Notice of the application to the counsel opposite.

Mr. Harish Nain, learned Assistant Advocate General, Haryana,
accepts notice on behalf of the non-applicant/appellants. He raises no
objection for the grant of prayer as raised in the present application.

Keeping in view the averments made in the application, which
are duly supported by an affidavit, the application is allowed. On joint
request of learned counsel for the parties, the main appeal is taken up for
hearing today itself.

RSA-1975-2008

1. In the present appeal, the challenge is to the judgments and decrees of the Courts below by which, the suit filed by the respondent-plaintiff challenging the order of punishment dated 03.11.2000 by which, two increments of the respondent-plaintiff without cumulative effect was stopped, has been set aside.

2. Learned counsel for the appellants submits that in the present appeal, the Courts have appreciated the evidence which has come in the enquiry proceedings which was beyond the jurisdiction of the Court hence, once the respondent-plaintiff was held guilty of the allegations alleged, he was rightly punished though, with the minor punishment of stoppage of two increments without cumulative effect. Learned counsel for the appellants further submits that the judgments and decrees of the Courts below are perverse as, it has already come on record that the respondent-plaintiff had consumed the liquor during the duty hours.

3. Learned counsel for the respondent-plaintiff submits that the present appeal was filed in the year 2008 and the minor punishment imposed on him vide order dated 03.11.2000 has already been set aside and the respondent-plaintiff has already retired from service and is getting pension as of now.

4. Learned counsel for the respondent-plaintiff further submits that the judgments and decrees of the Courts below are in-consonance with the evidence and facts which have come on record that the respondent-plaintiff was smelling of liquor and no finding has come on record that his blood or urine was ever tested to find out as to whether, the respondent-plaintiff had consumed alcohol or not. Learned counsel for the respondent-

plaintiff further submits that merely the smell of liquor coming from the mouth of the respondent-plaintiff is not to hold him guilty especially when it is not the case of the appellants that the respondent-plaintiff was under the influence of the liquor in the duty hours.

5. I have heard learned counsel for the parties and have gone through the record with their able assistance.

6. The judgments and decrees of the Courts below have been passed on the basis of the facts which have come on record. The trial Court in paragraph 12, has given the details of the evidence which has come on record to record the finding that the doctor had only given the opinion that the respondent-plaintiff was smelling of liquor but conceded that there was no blood or urine test conducted on the patient so as to opine that the liquor was consumed while on duty or the respondent-plaintiff was under the influence of the liquor during the duty hours. The Court, on the basis of the findings recorded by the enquiry officer to the effect, has held that once there is no allegation that the respondent-plaintiff was under the influence of the liquor during the duty hours especially in the absence of blood or urine test, no allegation can be made or proved that the respondent-plaintiff consumed the liquor during the duty hours or was under the influence of the liquor during the duty hours. Once the said finding has been recorded by the Courts below on the basis of the evidence which was part of the enquiry report only, in the facts and circumstances of the present case, the judgments and decrees of the Courts below needs no interference.

7. Further, it has already come on record in the judgment of the lower Appellate Court vide order dated 12.04.2008 in paragraph 2 that the doctor found the respondent-plaintiff normal at the time of examination and has also conceded that smell of liquor might be due to consumption of

medicine or syrup prescribed by the doctor. Once, the said fact had already come on record, keeping in view the concurrent findings recorded by the Courts below, this Court will not like to interfere especially when the respondent-plaintiff has already retired from service.

8. Further, merely that an employee smelling of liquor does not mean that the employee is under the influence of the liquor. Once, no blood or urine test has been conducted on the respondent-plaintiff, making an allegation against an employee that he has consumed liquor or was under the influence of the liquor, cannot be allowed to operate. If the Department was of the opinion that the respondent-plaintiff had consumed liquor, it was their duty being that respondent-plaintiff who was a police officer, should have get him medically examined and get his blood or urine test conducted so as to substantiate the said fact/allegations. In the absence of any blood or urine test conducted on an employee and making an allegation and that too in the departmental enquiry that the employee was under the influence of the liquor, has rightly been rejected by the Courts below.

9. No ground is made out for any interference by this Court in the present case.

10. Dismissed.

April 30, 2024
harsha

(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No